



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Thomas P. Madden - Relocation Expenses

File: B-227469

Date: October 17, 1988

DIGEST

Household goods transportation expenses for a new appointee to the federal service are authorized by law and the Federal Travel Regulations to persons appointed to positions which have been designated as manpower-shortage positions. The fact that agency officials erroneously authorized reimbursement of expenses for an appointee to a position which was not designated a manpower-shortage position provides no basis for payment since a payment not authorized by statute or regulation will not form the basis for estoppel against the government. Claim is not appropriate for reporting to the Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d), since it does not contain equities of unusual nature.

DECISION

The Executive Director for Operations, Nuclear Regulatory Commission (NRC), requests a decision on the claim of Mr. Thomas P. Madden for reimbursement of household goods transportation expenses he incurred in moving to his first duty station. We conclude that his claim may not be allowed. We also conclude, in response to NRC's inquiry, that this is not an appropriate matter for submission to the Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d).

BACKGROUND

NRC offered Mr. Madden an appointment to the position of Physical Security Investigator, grade GS-13, in a letter dated March 12, 1987, which was mailed to his address in Harvey, Louisiana. This position was at an NRC regional office in King of Prussia, Pennsylvania, and NRC advised him in the letter that he would be eligible to move to Pennsylvania at agency expense if he accepted the appointment. On April 14, 1987, NRC officials informed him by

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telephone, however, that this advice had been erroneous. They informed him that he would not be eligible to move at the agency's expense because the vacant position in Pennsylvania was not listed under the applicable federal regulations as being in a manpower-shortage category.

Mr. Madden subsequently accepted NRC's offer of employment and moved to Pennsylvania. He claims reimbursement of an unspecified amount for expenses he says he incurred in moving household goods to Pennsylvania. He states that at the time he received NRC's offer of employment in March 1987, his wife had received an active duty assignment with the Army near Anniston, Alabama. By virtue of that assignment, she had an entitlement in her own right to a 450-mile household goods shipment equivalent to a move between New Orleans, Louisiana, and Anniston, Alabama. She used this entitlement prior to the time in April when he was informed that NRC would not be able to transport their household goods to Pennsylvania. Had they known of this earlier, he says, then they would have used his wife's Army transportation entitlement to send all of their household goods directly to Pennsylvania, since they planned that she would ultimately join him there after she completed her Army assignment in Alabama. Thus, he argues, his detrimental reliance on the original promise made by NRC caused him to incur unnecessary household goods transportation expenses, and he suggests that he should therefore be allowed payment on his claim. In addition, NRC officials question whether the matter should be referred to the Congress under the Meritorious Claims Act in the event that Mr. Madden's claim cannot be allowed under the applicable statutes and regulations.

ANALYSIS AND CONCLUSION

Section 5723 of title 5, United States Code, and Chapter 2 of the Federal Travel Regulations, incorp. by ref., 41 C.F.R. § 101-7.003, authorize reimbursement of travel and transportation expenses of new federal employees appointed to manpower-shortage positions. New employees who are not in a manpower-shortage category are not authorized reimbursement of those expenses, however, and are instead personally responsible for the expenses of reporting to their first official duty station. See, generally, Cecil M. Halcomb, 58 Comp. Gen. 744 (1979). Since Mr. Madden was not appointed to a position listed as being in a manpower-shortage category, he had no entitlement under the applicable statutes and regulations to have his household goods transported to his first duty station in Pennsylvania at NRC's expense.

Mr. Madden suggests that he should nevertheless be allowed reimbursement because, he says, he acted in detrimental reliance on NRC's initial erroneous advice and promise that he would be eligible for reimbursement of his household goods transportation expenses. His claim thus appears to be based on the doctrine of promissory estoppel. Section 90 of the Restatement (Second) of Contracts defines the doctrine of promissory estoppel in the following terms:

"A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if the injustice can be avoided only by enforcement of the promise. The remedy for breach may be limited as justice requires."

However, this doctrine cannot properly be applied in claims against the government for employment benefits because:

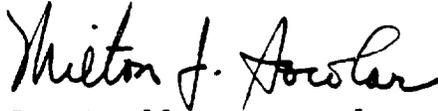
". . . the relationship between the Federal Government and its employees is not a simple contractual relationship. Since Federal employees are appointed and serve only in accordance with the applicable statutes and regulations, the ordinary principles of contract law do not apply." William J. Elder and Stephen M. Owen, 56 Comp. Gen. 85, 88 (1976). See also Schweiker v. Hansen, 101 S.Ct. 1468 (1981).

Hence, the federal courts and our Office have repeatedly and consistently held that the government cannot be bound through estoppel by erroneous representations concerning relocation benefits made by agency officials to new appointees. See, for example, Schuhl v. United States, 3 Cl. Ct. 207 (1983), and William J. Schuhl, B-206447, July 27, 1982. Thus, Mr. Madden's claim may not be allowed on the basis of any contention he may have that he acted in detrimental reliance on the initial advice he received from NRC.

With regard to NRC's inquiry about the Meritorious Claims Act, 31 U.S.C. § 3702(d), that act provides that when a claim against the United States is filed in the General Accounting Office which may not be lawfully adjusted by use of an appropriation, but which claim in our judgment contains such elements of legal liability or equity as to be deserving of the consideration of Congress, this Office shall submit it to Congress with our recommendation.

In this case, Mr. Madden was notified of the error before he had accepted the employment offer. Although he says he acted in detrimental reliance on the original promise, in our view this assertion is not sufficiently substantial to warrant reporting the matter to Congress.

Thus, we do not believe it would be appropriate for this Office to submit Mr. Madden's case to Congress under the Meritorious Claims Act.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Comptroller General
of the United States